IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.266 OF 2004

AND

NOTICE OF MOTION NO.1056 OF 2004

AND

NOTICE OF MOTION NO.1124 OF 2004

IN

SUIT NO.1179 OF 2003

...

Devji Ambabhai Patel ...Plaintiff

v/s.

Chunilal Velji Patel & ors. ...Defendants

...

Mr.J.S.Kini for the Plaintiff.

Mr.A.L.Patki with Mr.A.L. Gala for Defendants Nos.1 to 11 and 18.

Mr.D.H.Mehta i/b Deepak Thakore for Defendants Nos. 13 to 16.

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CORAM: D.K.DESHMUKH, J.

DATED: 14TH DECEMBER,2004

P.C.:

1. The subject matter of the suit is a building which the Plaintiff claims to be the joint family property. Flat No.16 which is presently lying vacant is the subject matter of all these three motions.

2. The Plaintiff and the Defendants want this flat to be handed over to them. As the suit is presently pending and there are disputes between the parties as to the extent of the joint family property, interest of the joint family in the building at this stage it will not be possible to make an order for handing over the flat No.16 in possession of any of the party. The learned Counsel appearing for the Plaintiff submitted relying on the order passed by this Court dated 30-6-2003 in Notice of Motion No.1751 of 2003 that Defendants Nos. 1 to 11 and 18 have accepted that this suit can be decreed in terms

of prayer clauses (a) & (b) and therefore, according to the learned Counsel there is no dispute between the parties in relation to extent of the joint family interest in the building and the shares.

3. To my mind this submission is devoid of any substance. It is clear from the order that that concession was made by the Defendants Nos. 1 to 11 and 18 on the basis that the building was to be sold on 'as is and where is basis'. It emerges before me that so far as Defendants Nos. 1 to 11 and 18 are concerned, they are presently occupying large number of flats in the building and if building is sold on 'as is and where is basis', Defendants Nos. 1 to 11 and 18 will continue to occupy those flats and that will be in equitable to other parties including the Plaintiff. It is obvious that Defendants Nos. 1 to 11 and 18 had made this concession because sale of the building on 'as is and where is basis' was to their advantage. But justifiably the other parties are opposing the sale of the building on 'as is where is basis' and the Defendants Nos. 1 to 11 and 18 are not conceding to the sale on the basis that flats presently occupied by all the sharers will be vacated by the sharers on sale of the building, and

therefore, in my opinion, it will not be appropriate to hold the Defendants Nos. 1 to 11 and 18 by their concession which is recorded in the order dated 30-6-2003, at this stage. Thus, the position remains that rival claims of the parties are to be decided, the shares are to be decided and the extent of the joint family interest in the building is to be decided, till then no finding can be recorded in regard to these aspect at this stage. In my opinion, therefore, it will be hazardous to make any order for delivery of flat No.16 in possession of any of the parties. Therefore, I had suggested that the Receiver can be appointed on flat No.16, so that that flat can be given on agency basis or calling bids so that the entire estate can benefit from the amount of royalty. Though, the Defendants Nos. 1 to 11 & 18 consented to this, this suggestion was opposed by the Plaintiff. There is no motion before me making this prayer for appointment of the Receiver, therefore, I cannot make that order due to opposition by the Plaintiff. Therefore, though the flat No.16 is lying vacant, it cannot be permitted to be delivered to any of the parties.

All the motions are disposed of.

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